

SENATE BILL NO. 162

INTRODUCED BY STORY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CONFORMING MONTANA UNEMPLOYMENT INSURANCE LAW
5 WITH FEDERAL LAW BY EXCLUDING A "NO-ADDITIONAL-COST SERVICE" FROM WAGES FOR STATE
6 UNEMPLOYMENT INSURANCE TAX PURPOSES; DEFINING "NO-ADDITIONAL-COST SERVICE";
7 AMENDING SECTION 39-51-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
8 RETROACTIVE AN APPLICABILITY DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 **Section 1.** Section 39-51-201, MCA, is amended to read:

13 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise,
14 the following definitions apply:

15 (1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of
16 payment, for employment during a calendar year.

17 (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the
18 first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the
19 arrangement approved by the secretary of labor of the United States, the base period is the period applicable
20 under the unemployment law of the paying state. For an individual who fails to meet the qualifications of
21 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116,
22 or a similar statute of another state or the United States, the base period means the first 4 quarters of the last
23 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24
24 months of the date on which the individual's disability was incurred.

25 (3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with
26 the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit
27 year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a
28 previously filed new claim. A subsequent benefit year may not be established until the expiration of the current
29 benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the
30 secretary of labor of the United States, the base period is the period applicable under the unemployment law

1 of the paying state.

2 (4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with
3 respect to the individual's unemployment.

4 (5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

5 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June
6 30, September 30, or December 31.

7 (7) "Contributions" means the money payments to the state unemployment insurance fund required by
8 this chapter but does not include assessments under 39-51-404(4).

9 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
10 17.

11 (9) "Domestic or household service" means employment of persons other than members of the
12 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
13 family, including but not limited to housecleaning and yard work, but does not include employment beyond the
14 scope of normal household or domestic duties, such as home health care or domiciliary care.

15 (10) "Employing unit" means any individual or organization (including the state government and any of
16 its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate,
17 joint-stock company, insurance company, limited liability company or limited liability partnership that has filed
18 with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy,
19 trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one
20 or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and
21 (1)(q). All individuals performing services within this state for any employing unit that maintains two or more
22 separate establishments within this state are considered to be employed by a single employing unit for all the
23 purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or
24 employee of an employing unit is considered to be employed by the employing unit for the purposes of this
25 chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee,
26 provided that the employing unit has actual or constructive knowledge of the work.

27 (11) "Employment office" means a free public employment office or branch of an office operated by this
28 state or maintained as a part of a state-controlled system of public employment offices or other free public
29 employment offices operated and maintained by the United States government or its instrumentalities as the
30 department may approve.

1 (12) "Fund" means the unemployment insurance fund established by this chapter to which all
2 contributions and payments in lieu of contributions are required to be paid and from which all benefits provided
3 under this chapter must be paid.

4 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for
5 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a
6 flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

7 (14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a
8 hospital.

9 (15) "Independent contractor" means an individual who renders service in the course of an occupation
10 and:

11 (a) has been and will continue to be free from control or direction over the performance of the services,
12 both under a contract and in fact; and

13 (b) is engaged in an independently established trade, occupation, profession, or business.

14 (16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education
15 Assistance Act, 25 U.S.C. 450b(e).

16 (17) (a) "Institution of higher education", for the purposes of this part, means an educational institution
17 that:

18 (i) admits as regular students only individuals having a certificate of graduation from a high school or
19 the recognized equivalent of a certificate;

20 (ii) is legally authorized in this state to provide a program of education beyond high school;

21 (iii) provides an educational program for which it awards a bachelor's or higher degree or provides a
22 program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or
23 postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized
24 occupation; and

25 (iv) is a public or other nonprofit institution.

26 (b) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education
27 for purposes of this part.

28 (18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue
29 Code, 26 U.S.C. 132.

30 ~~(18)~~(19) "State" includes, in addition to the states of the United States of America, the District of

1 Columbia, Puerto Rico, the Virgin Islands, and Canada.

2 ~~(19)~~(20) "Taxes" means contributions and assessments required under this chapter but does not include
3 penalties or interest for past-due or unpaid contributions or assessments.

4 ~~(20)~~(21) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that
5 is wholly owned by that tribe.

6 ~~(24)~~(22) "Unemployment insurance administration fund" means the unemployment insurance
7 administration fund established by this chapter from which administrative expenses under this chapter must be
8 paid.

9 ~~(22)~~(23) (a) "Wages", unless specifically exempted under subsection ~~(22)(b)~~ (23)(b), means all
10 remuneration payable for personal services, including the cash value of all remuneration paid in any medium
11 other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be
12 estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited
13 to:

14 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness
15 periods;

16 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous
17 service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

18 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are
19 documented by the employee to the employer for tax purposes.

20 (b) The term does not include:

21 (i) the amount of any payment made by the employer for employees, if the payment was made for:

22 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
23 Revenue Code;

24 (B) sickness or accident disability under a workers' compensation policy;

25 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
26 health insurance for the employee or the employee's immediate family; or

27 (D) death, including life insurance for the employee or the employee's immediate family; ~~or~~

28 (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other
29 expenses, as set forth in department rules; or

30 (iii) a no-additional-cost service.

